

REMARKS

In the Office Action, claims 13, 25, 26 and 29 were rejected under 35 USC §103(a) as being unpatentable over Franks in view of Kemper. Claims 13 and 26 were rejected under 35 USC §103(a) as being unpatentable over Georgianna in view of Franks and Buttgereit. Claims 24 and 28 were rejected under 35 USC §103(a) as being unpatentable over Georgianna, Franks and Buttgereit and further in view of Eich.

The Examiner has rejected claims 13, 25, 26 and 29, as unpatentable over Franks '822 in view of Kemper, claims 13 and 26, as unpatentable over Georgianna in view of Franks '272 and Buttgereit, and claims 24 and 28, as unpatentable over Georgianna, Franks and Buttgereit further in view of Eich. For each rejection the Examiner has relied on either the Franks '822 or the Franks '272 patents. Neither patent is citable against the present application. Neither patent constitutes prior art under 35 USC §102.

U.S. Patent No. 6,378,822, Franks, was filed January 9, 2001 and published as a patent on April 30, 2002. U.S. Patent No. 6,491,272, Franks, was filed August 9, 2001 as a continuation-in-part of the '822 patent, and was published as a patent on December 10, 2002.

The present application is the national stage of PCT/NZ00/00068 and has an effective filing date of May 5, 2000 and

a claimed priority date of May 5, 1999. The earliest filing date of the Franks' patents is January 9, 2001, 19 months after the earliest priority date of the present application and seven months after the effective filing date. Accordingly these documents do not qualify as prior art under 35 USC §102(a) or 35 USC §102(c). The printed publications of U.S. patents were available April 30, 2002 and December 10, 2002, being respectively 23 months and 31 months after the effective filing date of the present application. Accordingly the documents do not qualify as prior art under 35 USC §102(b).

The Examiner has rejected claims 13, 25, 26 and 29 as unpatentable over Franks '822 in view of Kemper. Franks '822 does not form part of the prior art and accordingly the Examiner's rejection under 35 USC §103(a) is unfounded.

The Examiner has rejected claims 13 and 26 as unpatentable over Georgianna in view of Franks '272 and Buttgereit. Franks '272 does not form part of the prior art and accordingly the Examiner's rejection under 35 USC 103(a) is unfounded.

The Examiner has rejected claims 24 and 28 as unpatentable over Georgianna, Franks and Buttgereit as applied to claims 13 and 26, further in view of Eich. Franks '272 does not form part of the prior art and accordingly the Examiner's rejection under 35 USC §103(a) is unfounded.


Based on the foregoing amendments and remarks, it is respectfully submitted that the claims in the present application, as they now stand, patentably distinguish over the references cited and applied by the Examiner and are, therefore, in condition for allowance. A Notice of Allowance is in order, and such favorable action and reconsideration are respectfully requested.

However, if after reviewing the above amendments and remarks, the Examiner has any questions or comments, he is cordially invited to contact the undersigned attorneys.

Respectfully submitted,

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